

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

### **I. DISPUTE**

1. a. Whether there should be additional reimbursement of \$3,583.21 for date of service 09/12/01.
- b. The request was received on 03/19/02.

### **II. EXHIBITS**

1. Requestor, Exhibit I:
  - a. TWCC 60 and Letter Requesting Dispute Resolution dated 01/07/02
  - b. HCFA 1450
  - c. EOB(s)
  - d. Example EOB(s) from other carriers
  - e. Initial Request for Medical Dispute dated 01/28/02
  - f. Letter to Compliance and Practice dated 01/07/02
  - g. Medical Records
  - h. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Respondent: Exhibit II:
  - a. TWCC 60 and Response to a Request for Dispute Resolution dated 04/08/02
  - b. Carrier's additional response dated 04/12/02
  - c. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome
3. Rule 133.307 (g) (3), the Division forwarded a copy of the requestor's 14 day response to the insurance carrier on 03/26/02. Per Rule 133.307 (g) (4), the carrier representative signed for the copy on 03/27/02. The response from the insurance carrier was received in the Division on 04/08/02. Based on 133.307 (i) the insurance carrier's response is timely.
4. Notice of Medical Dispute is reflected as Exhibit III of the Commission's case file.

### **III. PARTIES' POSITIONS**

1. Requestor: The requestor states in the correspondence dated 01/07/02 that they bill all payers identically regardless of whether the injury resulted on the job or not. The Requestor supplied a list of percentage reimbursement of all it's cases during the years of 1998 and 1999. This chart indicates that the average of all payers is 80% and

and for Texas Workers' Compensation payers it is 84%. A chart that shows the percentage of payment by Texas Workers' Compensation carriers for the year of 2000 has also been submitted. The provider supplied EOB(s) from other insurance carriers preceding 09/11/00 that were paid at 100%. The provider states, "This sampling of 100% payment for services rendered at...evidences that: Acceptance of fees for services at...as fair and reasonable occurs across the spectrum of insurances." The provider indicates that Ambulatory Surgical Centers (ASC) are not covered by the Medical Fee Guidelines so they must be paid at a fair and reasonable rate.

2. Respondent: The Respondent's representative states in the correspondence dated 04/08/02 that, "We have reviewed the issue regarding the 'fair and reasonable' payment....It is understood that the 'fair and reasonable' issue is fully negotiable for out [sic] patient procedures....the carrier respondent has developed and consistently applied a methodology allowing reimbursement at 85% of the billed amount for outpatient services, not to exceed twice the daily per diem rate of in-patient surgical procedures.... each outpatient procedure is allowed a maximum charge of \$2,236.00....The provider has billed \$5,819.21 and the carrier has paid a total of \$2,236.00. The carrier has paid this as a fair and reasonable amount....As the fee guides allow \$1,118.00 per diem for daily for daily in-patient surgical treatment, it seems quite 'fair' to allow two days of the daily in-patient per diem for outpatient services....It is the burden of the requestor,...to provide convincing evidence in support of their contentions that the fees were not fair and reasonable....the requestor must have some basis for determining their charges."

#### **IV. FINDINGS**

1. Based on Commission Rule 133.307(d) (1) (2), the only date of service eligible for review is 09/12/01.
2. The provider billed the carrier \$5,819.21 for services rendered on 09/12/01.
3. The carrier reimbursed the provider \$2,236.00 for date of service 09/12/01.
4. The amount in dispute per the provider representative is \$3,583.21 for 09/12/01.
5. The services provided by the provider include such items as O.R. services, pharmaceutical products, medical and surgical supplies, non-sterile supplies, IV therapy services, Radiology services, anesthesia equipment services, EKG/ECG monitor services, and Recovery Room services.
6. The provider included a letter dated 01/07/02 to Compliance and Practices stating, "No explanation-of-benefits has been received by...as a response to our Request for Reconsideration." Both parties refer to the dispute as being "fair and reasonable." The dispute will be reviewed by the Medical Review Division as a fair and reasonable dispute.

## **V. RATIONALE**

Medical Review Division's rationale:

The medical documentation indicates the services were performed at an ambulatory surgical center. Commission Rule 134.401 (a) (4) states ASC(s) "...shall be reimbursed at a fair and reasonable rate..."

Per the Texas Worker's Compensation Act and Rules §413.011(d):

Guidelines for medical services fees must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines."

The Medical Fee Guidelines General Instructions (VI) discuss that if a MAR value has not been established for a CPT code, reimbursement shall be, "...at the fair and reasonable rate."

Commission Rule 133.304 (i) (1-4) requires the carrier to explain how they arrived at what they consider a fair and reasonable reimbursement. The carrier compares the amount of reimbursement the provider received with the amount of reimbursement the Medical Fee Guidelines allow a hospital for inpatient surgery. The carrier submitted their methodology and, though, the entire methodology may not necessarily be concurred with by the Medical Review Division, the requirements of the Rule has been met.

The provider submitted additional reimbursement data (EOBs from various carriers) in an attempt to demonstrate payments of fair and reasonable documentation for treatment of an injured individual of an equivalent standard of living in their geographical area. The provider's documentation failed to meet the criteria of 133.307 (g) (3) (D) of demonstrating, discussing, and justifying fair and reasonable reimbursement from other carriers for similar treatment.

Because there is no current fee guideline for ASC(s), the Medical Review Division has to determine based on the parties submission of information, who has provided the more persuasive evidence. In this particular case, the carrier submitted a methodology, as required by 133.303 (i), which is sufficient to establish that the amount requested by the provider is not fair and reasonable. The health care provider has the burden to prove that the fees paid by the carrier were not fair and reasonable. The provider submitted EOB(s) from other carriers, but the documentation is insufficient to determine if the charge of the provider is fair and reasonable. Both parties to the dispute have submitted documentation in support of their position. However, the carrier's documentation is more persuasive and meets the requirement of Sec. 413.011(d) of the Texas Labor Code, "to achieve effective medical cost control." Therefore, no additional reimbursement is recommended. The carrier failed to meet the criteria of 413.011 (d), therefore, no reimbursement is recommended.

MDR: M4-02-1813-01

The above Findings and Decision are hereby issued this 17th day of May 2002.

Donna M. Myers, B.S.  
Medical Dispute Resolution Officer  
Medical Review Division

DMM/dmm

This document is signed under the authority delegated to me by Richard Reynolds, Executive Director, pursuant to the Texas Workers' Compensation Act, Texas Labor Code Sections 402.041 - 402.042 and re-delegated by Virginia May, Deputy Executive Director.